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PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) 40726/15	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR	Application Number 09/768,482	Filed January 23, 2001
on _____	First Named Inventor Greg Wiggins	
Signature _____	Art Unit	Examiner
Typed or printed name _____	2191	Ted T. Vo

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
    Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
   See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
   (Form PTO/SB/96)

☑ attorney or agent of record.
   Registration number _____ 40,842 _____

☐ attorney or agent acting under 37 CFR 1.34.
   Registration number if acting under 37 CFR 1.34 _____

_____
Signature

John R. Thompson
Typed or printed name

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Telephone number

9/4/2007
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of ____ forms are submitted.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Clear errors in fact have been made and essential elements required to establish a *prima facie* rejection are missing. In the Final Office Action mailed June 1, 2007 ("Final Office Action"), claims 1, 3-7, 10-17 and 21-22 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by "Create Self-Extracting ZIP Files with WinZip 6.3", Anonymous, *Inside the Internet*, ProQuest Computing, 5-2000 ("*Inside the Internet* (WinZip 6.3)") and by "Winzip Version 7.0," Nico Mak Computing, Inc. ("*Nico Mak* (WinZip 7.0)"). Further, claim 18 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over WinZip 7.0.

1. *Inside the Internet* (WinZip 6.3) clearly has not been established to be a prior art reference.

In an Amendment filed August 14, 2006, Applicant argued that *Inside the Internet* (WinZip 6.3) is not a prior art reference. Specifically, the pending application claims priority to U.S. Patent Application Serial No. 60/177,585 filed on January 23, 2000 ("the '585 application"). The pending application was timely filed with a priority claim to the '585 application. Under 35 U.S.C. § 119(e)(1), the pending application is entitled to the filing date of January 23, 2000. *Inside the Internet* (WinZip 6.3) was published on May 2000 and therefore does not constitute prior art under § 102(a) or § 102(b).

The Examiner subsequently withdrew the rejection based on *Inside the Internet* (WinZip 6.3). However, in the present Final Office Action, the Examiner once again rejects claims based on *Inside the Internet* (Winzip 6.3). The Examiner now argues on page 4 of the Final Office Action that "Version 6.3 of the Inside the Internet is obvious before Version 7.0, and before the effective filing date of this application."

Regardless of whether version 6.3 precedes version 7.0, *Inside the Internet* (WinZip 6.3) is clearly not a publication that qualifies as prior art because it was published after the effective filing date of the pending application. Further, the Examiner has not established when version 6.3 of WinZip became publicly available. Thus, rejections based on *Inside the Internet* (WinZip 6.3) should be withdrawn.

2. *Nico Mak* (WinZip 7.0) does not teach or suggest migrating files and settings associated with a first version of an application on a first computer to a second version of an application program on a second computer.

In an amendment filed March 5, 2007, claim 1 was amended to recite, among other things:

A system for describing and extracting application information, comprising...

(C)   a ***first version of an application program*** resident on said long term storage device of said processing unit of said first computer system;

(D)   a ***second version of said application program*** resident on said long term storage device of said processing unit of said second computer system; and

(E)   means for ***migrating files and settings associated with said application program*** from said first computer to said second computer, wherein said means for migrating further comprises:

    (1)   an application interface file ***identifying how to convert said settings from said first version to said second version*** of said application program;

    (2)   ...

    (3)   ...said console configured to ***scan said first computer for said files and settings to be migrated*** to said second computer; and

    (4)   ...said self-extracting auto-migration package configured to ***update said second version of said application program with said files and settings of said first version***.

(Emphasis added).

Nico Mac (WinZip 7.0) is extremely limited in its disclosure. Nevertheless, page 5 of the Final Office Action asserts that *Nico Mak* (WinZip 7.0) "discloses a system for extracting application information, included with an application WinZip registered in a Microsoft Window. The WinZip associates with Microsoft Windows' console to provide a user this application to create a [compressed] package ".ZIP" file. Within a created .ZIP file, it packs the files in which a user manages his files on his own computer or sends to the other users who want to share the files. The .ZIP is compressed; therefore migrates easily to other computers in the Internet." Applicant respectfully submits that even if the Examiner's characterization of *Nico Mac* (WinZip 7.0) is correct, it is completely unrelated to the subject matter of the pending claims.

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As discussed on page 10 of the Amendment filed March 5, 2007, claim 1 as a whole goes far beyond merely creating compressed files that a user can send to other users who want to share the files. Indeed, claim 1 goes far beyond the self-extracting ZIP files taught by *Inside the Internet* (WinZip 6.3), which has not been clearly established to be prior art.

As opposed to the teachings of *Nico Mac* (WinZip 7.0), claim 1 automatically migrates files and settings associated with a first version of an application program on a first computer to a second version of an application program on a second computer. Thus, preferences and settings are automatically maintained when switching computers and application versions. However, *Nico Mac* (WinZip 7.0) is completely silent as to the subject matter of claim 1.

For example, nowhere does *Nico Mac* (WinZip 7.0) teach or suggest "an application interface file identifying how to convert said settings from said first version to said second version of said application." A person of ordinary skill in the art would recognize that such a conversion may be very complicated. Clearly, allowing a user to select files for compression, or even self-extraction, does not fairly teach or suggest such a limitation.

As another example, nowhere does *Nico Mac* (WinZip 7.0) teach or suggest a "console configured to scan said first computer for said files and settings to be migrated to said second computer." The Examiner's assertions on page 6 of the Final Office Action that this limitation is satisfied by allowing a user to create recipients for a zipped file, adding/dropping files when creating the .Zip file, or copying ini entries to a registry are clear errors and are completely unrelated to the subject matter of claim 1.

As yet another example, nowhere does *Nico Mac* (WinZip 7.0) teach or suggest updating "said second version of said application program with said files and settings of said first version." Again, the subject matter of updating a second version of an application program with files and settings of a first version of the program is completely missing from the cited references.

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In summary, the cited prior art does not teach or suggest the subject matter of claim 1 as a whole. For anticipation, the "identical invention must be shown in as complete detail as is contained in the...claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Pages 2-3 of the Final Office Action assert that the claimed features discussed above "present no patentable features, but they are available into any computer before the filing of this application." However, Applicant respectfully submits that the Examiner's arguments on pages 2 and 3 of the Final Office Action improperly remove claim language from the context of claim 1. For example, on page 2 of the Final Office Action, the Examiner asserts that the file system of any computer will be available for storing any version of an application. Such an analysis is a clear error because it does not take into account the context and details of the invention, as claimed. Thus, the rejection of claim 1 should be withdrawn.

3. *Nico Mak* (WinZip 7.0) does not teach or suggest a Personality Package corresponding to a particular user's settings and preferences and migrating such settings and preferences from a source computer to a destination computer.

In the amendment filed March 5, 2007, claim 3 was amended to recite, among other things:

A method for extracting and migrating application information, comprising...

(A)   loading a ***Personality Package corresponding to a user***, said Personality Package comprising ***user settings, user preferences***, application programs and data files for migration ***from a source computer to a destination computer***, <u>***said Personality Package corresponding to specified application versions***</u>;

...

(G)   getting application version specifics, and testing to determine if ***destination application versions in said destination computer match said application versions specified in said Personality Package***, and generating an error if said destination application versions do not match....

(Emphasis added).

On page 7 of the Final Office Action, the Examiner asserts that creating a WinZip file is the same as loading a Personality Package comprising ***user***

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settings and preferences corresponding to specified application versions.
However, as discussed above, *Nico Mac* (WinZip 7.0) is completely silent as to
settings and preferences corresponding to specified application versions.
Rather, the cited references merely discuss compressing and decompressing
user selected files.

On page 8 of the Final Office Action, the Examiner asserts that the "acts of
drag and drop that allocates a path (or link), to a location that stored a version"
satisfies the requirement of "testing to determine if destination application
versions in said destination computer match said application versions specified in
said Personality Package." However, Applicant respectfully disagrees. Merely
selecting files for inclusion in a self-extracting ZIP file and specifying a
destination path for extracting the files is completely unrelated to testing for a
match between destination application versions and application versions
specified in the Personality Package. Thus, the rejection of claim 3 should be
withdrawn.

4. Conclusion

Based at least on the foregoing, claims 1 and 3 are allowable over the art that
has been cited and applied by the Examiner. Further, claims 4-7, 10-18 and 21-22 are
also allowable as depending from claims 1 and 3, respectively. Applicant therefore
requests withdrawal of the rejections and allowance of the application at an early date.

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